

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEREK LOWELL KIRK,

Petitioner,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

Case No. 3:16-cv-00079-MMD-VPC

ORDER

Petitioner Derek Lowell Kirk has submitted a partially completed *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on the Court's form (dkt. no. 1-1). Petitioner failed to submit an application to proceed *in forma pauperis*. Moreover, Kirk sets forth no grounds for federal habeas relief in his petition; instead he states that he is unable to file a petition at this time because Nevada Department of Corrections (NDOC) personnel have refused to transfer his legal materials to the institution where he is now housed.

Kirk has not properly commenced a federal habeas matter. 28 U.S.C. § 1915(a)(2); Local Rule LSR1-2. Moreover, if Kirk asserts that prison personnel refuse to give him his legal materials and he is thus unable to file a federal habeas petition, such a claim is cognizable under 42 U.S.C. § 1983 as a violation of his constitutional right to access to the courts. Such a claim does not state a claim for which federal habeas relief may be granted.

1 Thus, the present action will be dismissed without prejudice to the filing of either a
2 new petition in a new action or a civil rights complaint with either the appropriate filing fee
3 or a completed application to proceed *in forma pauperis* on the proper form with both an
4 inmate account statement for the past six months and a properly executed financial
5 certificate.

6 It is therefore ordered that this action is dismissed without prejudice as set forth in
7 this order.

8 It is further ordered that a certificate of appealability is denied, as jurists of reason
9 would not find the Court's dismissal of this improperly commenced action without
10 prejudice to be debatable or incorrect.

11 It is further ordered that the Clerk send petitioner two copies each of an application
12 form to proceed *in forma pauperis* for incarcerated persons and a civil rights complaint
13 pursuant to 42 U.S.C. § 1983 form, one copy of the instructions for each form, and a copy
14 of the papers that he submitted in this action.

15 It is further ordered that petitioner's motion for stay and for order for return on legal
16 materials (docketed as two motions at dkt. nos. 3 and 4) is denied.

17 It is further ordered that the Clerk enter judgment accordingly and close this case.

18 DATED THIS 19th day of April 2016.

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21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
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